

## **TITLE VII – COMBAT METHAMPHETAMINE EPIDEMIC ACT OF 2005.**

### *Sec. 701. Short Title.*

The short title is the “Combat Methamphetamine Epidemic Act of 2005.” Section 701 of the conference report is a new section that is related to the purpose of this title.

### Subtitle A—Domestic Regulation of Precursor Chemicals

### *Sec. 711. Scheduled Listed Chemical Products; Restrictions on Sale Quantity, Behind-the-Counter Access, and Other Safeguards.*

This section of the conference report is new. Section 711 reclassifies pseudoephedrine, PPA, and ephedrine as Schedule Listed Chemicals; reduces the Federal per-transaction sales limit for SLCs from 9 grams to 3.6 grams (the amount recently proposed by the Administration); requires behind-the counter storage or locked cabinet storage of SLCs; requires that regulated sellers (retail distributors and pharmacies) maintain a written log of purchases; restricts monthly sales to no more than 9.0 grams to a single purchaser; imposes similar requirements on Internet sellers and mobile retail vendors; and requires each regulated seller to submit a certification that it is compliance with these requirements, that its employees have been trained as to these requirements, and that records relating to such training are maintained at the retailers location. Such certifications are to be made available by the Attorney General to State and local law enforcement.

### *Sec. 712. Regulated Transactions.*

This section of the conference report is new and repeals the Federal “blister pack” exemption, and clarifies the law to include derivatives of each of these chemicals.

Subsections (b) and (c) make conforming amendments to the current law, to accommodate the new sales restrictions. Subsection (d) makes another technical correction to make it clear that these sales limitations apply to drug combinations containing derivatives of pseudoephedrine, ephedrine, or phenylpropanamine.

### *Sec. 713. Authority to Establish Production Quotas.*

This section of the conference report is new and extends the Attorney General’s existing authority to set production quotas for certain controlled substances (*see* 21 U.S.C. § 826) to pseudoephedrine, ephedrine, and phenylpropanolamine. Currently, domestic production of these chemicals is not very high, as most of our supply is imported. If Congress adopts the import quotas enacted by section 715 of this Act (*see* below), however, the Attorney General would require corresponding authority within the U.S. if domestic production were to increase. Current law (as amended) would allow manufacturers to apply for increases in their production quotas (*see* 21 U.S.C. § 826(e)).

### *Sec. 714. Penalties; Authority for Manufacturing; Quotas.*

This section of the conference report is new and expands the existing penalty for illegal production beyond established quotas (*see* 21 U.S.C. § 842(b)) to take into account the Attorney General's new authority to set quotas for meth precursors.

*Sec. 715. Restrictions on Importation; Authority To Permit Imports for Medical, Scientific, or Other Legitimate Purposes.*

Section 715 of the conference report extends the Attorney General's existing authority to set import quotas for controlled substances (*see* 21 U.S.C. § 952) to pseudoephedrine, ephedrine, and phenylpropanolamine. This section allows registered importers to apply for temporary or permanent increases in a quota to meet legitimate needs, which would have to be acted on within 60 days.

*Sec. 716. Notice of Importation or Exportation; Approval of Sale or Transfer by Importer or Exporter.*

Section 716 of the conference report is new and remedies a loophole in the current regulatory system for imports and exports of precursor chemicals for methamphetamine and other synthetic drugs. Under current law, an importer or exporter who wishes to import pseudoephedrine or another precursor chemicals must either: (1) notify the Department of Justice 15 days in advance of the import or export; or (2) be a regular importer or exporter (i.e., a company that the Department has previously allowed to import or export), and plan to sell the chemicals to a regular customer (again, one that the Department has previously permitted to take delivery). (*See* 21 U.S.C. § 971(a) and (b).)

A problem can arise, however, when the sale that the importer or exporter originally planned falls through. When this happens, the importer or exporter must quickly find a new buyer for the chemicals on what is called the "spot market" – a wholesale market. Sellers are often under pressure to find a buyer in a short amount of time, meaning that they may be tempted to entertain bids from companies without a strong record of preventing diversion. More importantly, the Department of Justice has no opportunity to review such transactions in advance and suspend them if there is a danger of diversion to illegal drug production.

This section extends the current reporting requirements – as well as the current exemption for regular importers, exporters, and customers – to post-import or export transactions. If an importer or exporter was required to file an initial advance notice with the Department of Justice 15 days before the shipment of chemicals, and the originally planned sale fell through, the importer or exporter would then have to file a second advance notice with DOJ identifying the new proposed purchaser. DOJ would then have 15 days to review the new transaction and decide whether it presents enough of a risk of diversion to warrant suspension. As is the case under existing law, a suspension can be appealed through an administrative process. (*See* 21 U.S.C. 971(c)(2)).

If, however, an importer or exporter was exempted from filing an initial advance notice because it qualifies as a "regular" importer or exporter under existing law, that importer or exporter

would not have to file the second advance notice, as long as the new proposed purchaser also qualifies as a “regular” customer under existing law. (Note that under current law, DOJ does receive a record of these transactions after the fact, *see* 21 U.S.C. § 971(b)(1)).

*Sec. 717. Enforcement of Restrictions on Importation and of Requirement of Notice of Transfer.*

This section of the conference report is new and makes a conforming amendment to current law to extend existing penalties for illegal imports or exports to the new regulatory requirements added by sections 715 and 716 of the conference report.

*Sec. 718. Coordination with United States Trade Representative.*

This section of the conference report is new and requires coordination by the Attorney General with the United States Trade Representative.

Subtitle B—International Regulation of Precursor Chemicals

*Sec. 721. Information of Foreign Chain of Distribution; Import Restrictions Regarding Failure of Distributors to Cooperate.*

This section of the conference report is new and further amends the reporting requirements for importers of meth precursor chemicals, by requiring them to file with Federal regulators the detailed information about the chain of distribution of imported chemicals (from the manufacturer to the shores of the U.S.). This provision will assist U.S. law enforcement agencies to better track where meth precursors come from, and how they get to the U.S. At present, very little information exists about the international “chain of distribution” for these chemicals, hindering effective controls.

*Sec. 722. Requirements Relating To The Largest Exporting And Importing Countries Of Certain Precursor Chemicals.*

This section of the conference report is new, and was originally introduced by Rep. Mark Kennedy in the House and was adopted by the House as part of the State Department reauthorization legislation for FY 2006-07 (H.R. 2601). It mandates a separate section of the current State Department report on major drug producing and transit countries (*see* 22 U.S.C. § 2291h), identifying the five largest exporters of major methamphetamine precursor chemicals, and the five largest importers that also have the highest rate of methamphetamine production or diversion of these chemicals to the production of methamphetamine. If any of those countries was not fully cooperating with U.S. law enforcement in implementing their responsibilities under international drug control treaties, there would be consequences for their eligibility for U.S. aid, similar to those faced by the major drug trafficking nations under current law.

The conference report adds a provision clarifying the original intent of this amendment, to apply the “fully cooperates” standard (and not the lesser standard under another, separate provision of law). The provision also includes an authorization of one million dollars for implementation. The House recently passed an amendment to the State Department’s appropriations bill for FY

'06, adding \$5 million for the State Department to implement anti-methamphetamine measures; this \$1 million could be derived from that amount.

*Sec. 723. Prevention Of Smuggling Of Methamphetamine Into The United States From Mexico.*

This section of the conference report requires the State Department's Bureau for International Narcotics and Law Enforcement Affairs (INL) to provide assistance to Mexico to prevent the production of methamphetamine in that country, and to encourage Mexico to stop the illegal diversion of methamphetamine precursor chemicals. The conference report authorizes the use of \$4 million of the \$5 million recently approved by the House for these purposes. (The remaining funds would be available to help the State Department implement Sec. 722, as described above.)

Subtitle C – Enhanced Criminal Penalties for Methamphetamine Production and Tracking

*Sec. 731. Smuggling Methamphetamine or Methamphetamine Precursor Chemicals into the United States While Using Facilitated Entry Programs.*

This section of the conference report is new. Even as more methamphetamine is being smuggled across the border, increased legitimate international traffic has forced the bureau of Customs and Border Protection (CBP) to rely on facilitated entry programs – so-called “fastpass” systems like SENTRI (for passenger traffic on the Southwest border), FAST (for commercial truck traffic), and NEXUS (for passenger traffic on the Northern border). These systems allow pre-screened individuals to use dedicated lanes at border crossings, subject only to occasional searches to test compliance with customs and immigration laws. This section of the conference report creates an added deterrent for anyone who misuses a facilitated entry program to smuggle methamphetamine or its precursor chemicals. An additional penalty of up to 15 years imprisonment is added to the punishment for the base offense. If convicted, an individual would also be permanently barred from using a fastpass system.

*Sec. 732. Manufacturing Controlled Substances on Federal Property.*

This section of the conference report is new. This section clarifies that current penalties for cultivating illegal drugs on Federal property also apply to manufacturing synthetic drugs (such as methamphetamine). Methamphetamine “cooks” frequently move their operations to parks, national forests, and other public lands, causing serious environmental damage. This criminal penalty can help deter such destructive conduct.

*Sec. 733. Increased Punishment for Methamphetamine Kingpins.*

This provision of the conference report is new, and allows for easier application of the enhanced penalties of the “continuing criminal enterprise” section of the Controlled Substances Act (21 U.S.C. § 848). That section (commonly referred to as the “kingpin” statute) imposes life imprisonment on a leader of a drug trafficking organization convicted of trafficking in very large quantities of a drug, and receiving very large profits from that activity. This new provision reduces the threshold amount of methamphetamine (from 300 to 200 times the threshold for base violations) and profits from methamphetamine (from \$10 million to \$5 million), while still

applying the life imprisonment penalty only to true “kingpins” – the ringleaders of methamphetamine trafficking organizations.

*Sec. 734. New Child-Protection Criminal Enhancement.*

This provision of the conference report, which is new, punishes an offender who manufactures methamphetamine at a location where a child resides or is present, and imposes a consecutive sentence of up to an additional 20 years imprisonment.

*Sec. 735. Amendments to Certain Sentencing Court Reporting Requirements.*

This provision of the conference report is new and authorizes the United States Sentencing Commission to establish a form to be used by United States District Judges when imposing criminal sentences in order to facilitate data gathering and reporting by the Sentencing Commission.

*Sec. 736. Semiannual Reports to Congress.*

This provision, which is new to the conference report, requires the Attorney General to report to Congress on investigations and prosecutions relating to methamphetamine production.

Subtitle D – Enhanced Environmental Regulation of Methamphetamine Byproducts

*Sec. 741. Biennial Report to Congress on Agency Designations of By-Products on Methamphetamine Laboratories as Hazardous Materials.*

This provision of the conference report is new, and requires the Department of Transportation to report to Congress every two years whether then-existing statutes and regulations cover methamphetamine by-products as hazardous materials.

*Sec. 742. Methamphetamine Production Report.*

This provision of the conference report is new, and requires the Environmental Protection Agency (EPA) to report to Congress every two years on whether then-existing statutes and regulations cover methamphetamine by-products as hazardous materials.

*Sec. 743. Cleanup Costs.*

This provision of the conference report is new, and clarifies existing law imposing the obligation of restitution for environmental cleanup costs on persons involved in meth production and trafficking. The recent decision of the Eighth Circuit Court of Appeals in *United States v. Lachowski* (405 F.3d 696, 8th Cir. 2005) has undermined the ability of the Federal government to seek cleanup costs from methamphetamine traffickers who are convicted only of methamphetamine possession – even when the methamphetamine lab in question was on the defendant’s own property. This provision would ensure that any person convicted of a methamphetamine-related offense can be held liable for clean-up costs for methamphetamine

production that took place on the defendant's own property, or in his or her place of business or residence.

#### Subtitle E – Additional Programs and Activities

##### *Sec. 751. Improvements to Department of Justice Drug Courts Program.*

This section of the conference report is new, and revises the Drug Court program statute to clarify the requirement for periodic testing, graduated sanctions when an offender tests positive, and a list of potential sanctions when a positive test occurs.

##### *Sec. 752. Drug Courts Funding.*

This provision of the conference report is new and authorizes appropriations for drug courts.

##### *Sec. 753. Feasibility Study on Federal Drug Courts.*

This provision of the conference report, which is new, directs the Attorney General to conduct a study on the feasibility of Federal drug courts.

##### *Sec. 754. Grants to Hot Spot Areas to Reduce Availability of Methamphetamine.*

This section, which is new to the conference report, authorizes \$99 million for fiscal years 2006 to 2010 for grants to State and local law enforcement agencies to assist in the investigation of methamphetamine traffickers and to reimburse the DEA for assistance in cleaning up methamphetamine laboratories.

##### *Sec. 755. Grants for Programs for Drug-Endangered Children.*

This section of the conference report authorizes grants to States to assist in treatment of children who have been endangered by living at a residence where methamphetamine has been manufactured or distributed.

*Sec. 756. Authority to Award Competitive Grants to Address Methamphetamine Use by Pregnant and Parenting Women Offenders.*

Section 756 is a new provision and authorizes the Attorney General to award grants to address the use of methamphetamine among pregnant and parenting women offenders to promote public safety, public health, family permanence and well being.